weight of milk used to manufacture butter-nonfat dry milk for the first 15 days of the preceding month exceed or are less than the respective gross values for the first 15 days of the second preceding month.

(c) Compute weighting factors to be applied to the changes in gross values determined pursuant to paragraph (b) of this section by determining the relative proportion that the data included in each of the following subparagraphs is of the total of the data represented in paragraph (c) (1) and (2) of this section:

(1) Combine the total American cheese production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support Program for cheddar cheese to determine the quantity of milk used in the production of American cheddar cheese; and

(2) Combine the total nonfat dry milk production for the States of Minnesota and Wisconsin, as reported by the Economics and Statistics Service of the Department for the third preceding month, and divide by the yield factor used under the Price Support program for nonfat dry milk to determine the quantity of milk used in the production of butter-nonfat dry milk.

(d) Compute a weighted average of the changes in gross values per hundredweight of milk determined pursuant to paragraph (b) of this section in accordance with the relative proportions of milk determined pursuant to paragraph (c) of this section.

4. Section 1138.53 is revised to read as follows:

§ 1138.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III price for the preceding month and, for each month after the first month in which this section is effective, the final Class II price for the preceding month; and on or before the 15th day of each month the tentative Class II price for the following month.

United States Department of Agriculture—Agricultural Marketing Service

Marketing Agreement Regulating the Handling of Milk in Certain Specified Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR Part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ [1] to , all inclusive, of the order regulating the handling of milk in the said marketing area (7 CFR—Part [2]) which is annexed hereto; and

II. The following provisions:

§ [3] *Record of milk handled and authorization to correct typographical errors.*

(a) *Record of milk handled.* The undersigned certifies that he handled during the month of *January 1981*, hundredweight of milk covered by this marketing agreement.

(b) *Authorization to correct typographical errors.* The undersigned hereby authorizes the Director, or Acting Director, Dairy Division, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

§ [3] *Effective date.* This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with § 900.14(a) of the aforesaid rules of practice and procedure.

In witness whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

(Signature) ————

(Seal)

By (Name) (Title) ————

(Address) ————

Attest ————

Date ————

[FR Doc. 81-20808 Filed 7-13-81; 8:45 am]

BILLING CODE 3410-02

[1] First and last sections of the order.

[2] Appropriate part number

[3] Next consecutive section number.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33-6327, File No. S7-890]

Automatic Effectiveness of Post-Effective Amendments Filed by Investment Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to the rule governing automatic effectiveness of post-effective amendments to registration statements filed by registered open-end management investment companies and unit investment trusts, other than insurance company separate accounts. The proposed amendments would provide that, under certain conditions, the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not prevent the prior amendment from becoming effective automatically. As a result, a registrant that had filed a post-effective amendment containing a prospectus that disclosed a material event could file another amendment to update the financial statements in the prospectus before the first amendment had become effective, and both amendments would become effective on the same day, sixty days after the filing of the first amendment. The Commission is proposing these amendments primarily to facilitate the process by which an open-end investment company updates its prospectus in order to use the prospectus as the equivalent of an annual report to shareholders.

DATE: Comments must be received on or before August 10, 1981.

ADDRESSES: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7-890. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: Dianne E. O'Donnell, Special Counsel, (202) 272-2093, or Susan P. Hart, Attorney, (202) 272-2098, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is publishing for comment proposed amendments to paragraphs (b) and (d) of rule 465 [17 CFR 230.465] under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.]. The proposed amendment to rule 465(d) would provide that the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not suspend the sixty-day waiting period initiated by the filing of the prior amendment, provided that the subsequent amendment was filed pursuant to paragraph (b) of rule 465 and that it designated as its effective date the same day as the anticipated effective date of the prior filing. Paragraph (b) of rule 465 would be amended to make the subsequent amendment eligible for filing under that provision. The proposed amendments to rule 465 would permit an investment company to file a post-effective amendment under paragraph (a) which contains an updated narrative portion of its prospectus but no updated financial statements, and then, before such amendment has become effective, to file a subsequent post-effective amendment pursuant to paragraph (b) containing updated financial statements in addition to the updated narrative. The two amendments would become effective simultaneously, the same day as the anticipated effective date of the amendment filed under paragraph (a). These proposed changes would facilitate the process by which an investment company brings its prospectus up to date when it has experienced a material event requiring disclosure under paragraph (a) but does not have complete or updated financial statements sixty days prior to the desired date of effectiveness.

Although the proposed amendments would not be provided exclusively for the use of such companies, they would make it easier for an open-end management investment company that wished to use its prospectus in lieu of the annual report to shareholders pursuant to revised rule 30d-1 [17 CFR 270.30d-1] under section 30(d) of the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a-29(d)], to bring the prospectus up to date within sixty days after the end of the fiscal year.[1]

Discussion

On August 25, 1980, the Commission adopted rule 465 under the 1933 Act to permit most post-effective amendments to registration statements filed by open-end management investment companies and unit investment trusts, other than insurance company separate accounts, to become effective automatically, without affirmative action on the part of the Commission or its staff.[2] Under paragraph (b) of rule 465, certain routine filings become effective automatically without prior staff review. A post-effective amendment may be filed pursuant to paragraph (b) of the rule for any one or more of the three purposes listed in paragraph (b)(1): increasing the number or amount of securities offered pursuant to section 24(e)(1) of the 1940 Act [15 U.S.C. 80a-24(e)(1)]; registering an indefinite number or amount of securities pursuant to section 24(f) of the 1940 Act [15 U.S.C. 80a-24(f)] and rule 24f-2 thereunder [17 CFR 270.24f-2]; or bringing the financial statements and other information up to date pursuant to section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)], and, in conjunction therewith, making such non-material changes as the registrant deems appropriate. A post-effective amendment containing disclosure about any of the six events listed in paragraph (b)(2) of the rule, or about any other material event requiring disclosure in the prospectus, must be filed pursuant to rule 465(a). These amendments are reviewed by the staff in advance of effectiveness and may be the subject of staff comments. In most cases such filings become effective on the sixtieth day after filing.

Paragraph (d) of rule 465 now provides that a post-effective amendment containing a prospectus shall not become effective under paragraph (a) (on the sixtieth day after it is filed) if a subsequent post-effective amendment relating to the same prospectus is filed before such amendment becomes effective. In effect, the filing of a subsequent amendment relating to the same prospectus supersedes the prior amendment. As a result, unless the staff advances the effective date of the subsequent amendment, no post-effective amendment relating to the registrant's prospectus can become effective automatically pursuant to rule 465 until sixty days after the filing of the subsequent amendment. This result obtains because any post-effective amendment relating to a prospectus filed during the pendency of a post-effective amendment filed pursuant to paragraph (a) of rule 465 would itself have to be filed pursuant to paragraph (a). Although rule 465(b)(1)(iii) permits annual updating post-effective amendments [3] to become effective upon (or shortly after) filing, a registrant that has a rule 465(a) filing pending would not be able to rely on rule 465(b) for a subsequent amendment relating to its prospectus, because it would not be able to make the representations required by paragraphs (b)(2) and (b)(3).[4] Those provisions require the registrant to represent that it has not experienced a material event, either one listed in the rule itself or one "requiring disclosure in the prospectus," since the *effective* date of its 1933 Act registration statement or most recent post-effective amendment thereto.

As a result of the operation of the rule, a registrant that must file pursuant to rule 465(a) but that does not have all the information necessary to bring its prospectus up to date as of sixty days before its desired effective date must either file a post-effective amendment under rule 465(a) sixty days before its desired effective date, supplying mission information in a subsequent post-effective amendment also filed under rule 465(a), or delay filing until all the information is available and then file a post-effective amendment under rule 465(a). In either event, to become effective on the desired date the registrant must request the staff to advance the effective date of the amendment. This result is undesirable for registrants in view of the Commission's statement, in the release proposing rule 465, that "the fact that a registrant's prospectus is, or is about to become, stale would not be considered sufficient reason for the Commission or staff to exercise its power to set an effective date earlier than sixty days after filing."[5]

The problems raised by this procedure were emphasized by the Commission's revision of rule 30d-1 under the 1940 Act to permit open-end management investment companies, *inter alia*, to use prospectuses in lieu of reports to shareholders. To take advantage of this option, a registrant must have its updated prospectus become effective and be transmitted to its shareholders within sixty days after the end of its fiscal year, in orde to transmit its report to shareholders on time.[6] A registrant that had to file under rule 465(a), however, would not have an effective prospectus until sixty days after filing. Accordingly, it would have to file its post-effective amendment no later than the end of the fiscal year. In order to update the prospectus, however, the post-effective amendment would need to contain current financial statements, which would generally not be ready until at least thirty days after the end of the fiscal year. Therefore, a registrant that wished to send a prospectus in

[1] Revised rule 30d-1 is being adopted on this date by the Commission in Investment Company Act Release No. 11850 published under Rules and Regulations in this issue.

[2] Securities Act Release No. 6229 [45 FR 57702, Aug. 29, 1980].

[3] That is, amendments filed to bring the financial statements and other information in the prospectus up to date pursuant to section 10(a)(3) of the 1933 Act.

[4] On the other hand, an amendment made only under paragraphs (b)(1)(i) or (b)(1)(ii) of the rule—to register additional shares or an indefinite number of shares—can be filed and become effective automatically while a paragraph (a) filing is pending, because it does not contain a prospectus. *See* General Instruction F.3. of Form N-1 [17 CFR 239.15, 274.11].

[5] Securities Act Release No. 6205 (April 3, 1980) [45 FR 24500, April 10, 1980].

[6] The Commission has extended the time period' for mailing shareholder reports from forty-five to sixty days in order to provide more time for open-end companies to take advantage of this provision. The Commission determined that sixty days was the maximum period of time it could permit, in view of the requirement of section 30(d) of the 1940 Act that information in a shareholder report be "as of a reasonably current date."

place of an annual report would have to file, before the end of the company's fiscal year, an amendment under rule 465(a) containing an updated narrative portion of the prospectus but not updated financial statements. After the paragraph (a) amendment became effective, but within sixty days after the end of the fiscal year, the company would then make a separate filing under rule 465(b) containing the newly effective narrative plus updated financial statements, to become effective at such time as it could be used in lieu of the annual report. As a result, the company would, within a short period of time, have three separate prospectuses: the old one, the one with an updated narrative, and the fully updated one.

The Commission agrees with the commentators on proposed revised rule 30d-1 that this procedure is unduly cumbersome for a registrant that must file its annual updating amendment under rule 465(a). Comtemporaneously with the adoption of revised rule 30d-1, therefore, the Commission is proposing amendments to rule 465(d) to provide that, under certain circumstances, the filing of a post-effective amendment containing a prospectus during the pendency of a prior post-effective amendment relating to the same prospectus would not suspend the sixty-day waiting period initiated by the filing of the prior amendment. The subsequent amendment would have to be filed pursuant to paragraph (b) of the rule, and would have to designate as its effective date the same day as the effective date of the prior amendment. The Commission is also proposing amendments to rule 465(b) to permit the subsequent amendment to be filed under that paragraph, despite the pendency of a filing under paragraph (a).

As applied to a registrant that wanted to use its prospectus in place of an annual report to shareholders, the proposed amendments to rule 465 would permit the registrant to file the updated narrative portion of its prospectus under paragraph (a) shortly before the end of its fiscal year. During the sixty-day waiting period, the registrant would file another amendment under paragraph (b) containing the updated financial statement (and such other non-material changes as the registrant deemed appropriate) and designating as its effective date the same day as the effective date of the prior filing. As a result, the registrant would have a fully updated prospectus become effective within sixty days after the close of the fiscal year in time for the prospectus to be used in place of the annual report.

As was stated in the release adopting rule 465,[7] registrants can know at any time the date upon which their current prospectuses will become stale. Similarly, they can determine the date by which they must send their prospectuses to shareholders in lieu of an annual report under revised rule 30d-1. As a result, the Commission believes that, under the amendment being proposed herein, registrants that must file their new prospectuses under rule 465(a) will nonetheless be able to take advantage of the new integrated disclosure procedures described in Investment Company Act Release No. 11850, without the undue burden that might result absent the amendment.

Text of Proposed Amendments to Rule 465

It is proposed to amend Chapter II of Title 17 of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. By revising the introductory text of paragraphs (b), (b)(2) and (3), and paragraph (d) of § 230.465 to read as follows:

§ 230.465 Effective date of post-effective amendments filed by certain registered investment companies.

* * * * *

(b) Except as otherwise provided in this section, a posteffective amendment to a registration statement filed by a registered open-end management investment company or unit investment trust, other than a registered separate account as defined in section 2(a)(37) of the Investment Company Act of 1940 [15 U.S.C. 80a-2(a)(37)], shall become effective on the date upon which it is filed with the Commission, or such later date designated by the registrant on the facing sheet of the amendment, which date shall be not later than twenty days after the date on which the amendment is filed, provided that the following conditions are met:

* * * * *

(2) Any prospectus filed as a part of such amendment does not include disclosure relating to any of the following events to extent that such events have occurred since the effective date of the registrant's registration statment or the effective date of its most recent post-effective amendment thereto which included a prospectus, whichever is later, unless such events are disclosed in a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective:

* * * * *

(3) The registrant represents that no material event requiring disclosure in the prospectus, other than one listed in paragraph (b)(1) of this section, has occurred since the latest of the following three dates: (i) the effective date of the registrant's registration statement; (ii) the effective date of its most recent post-effective amendment to its registration statement which included a prospectus; or (iii) the filing date of a post-effective amendment filed pursuant to paragraph (a) of this section which has not yet become effective; and

* * * * *

(d)(1) Except as provided in paragraph (d)(2) of this section, a post-effective amendment which includes a prospectus shall not become effective pursuant to paragraph (a) of this section if a subsequent post-effective amendment relating to such prospectus is filed before such amendment becomes effective.

(2) A post-effective amendment which includes a prospectus shall become effective pursuant to paragraph (a) of this section notwithstanding the filing of a subsequent post-effective amendment relating to such prospectus, *Provided*, That such subsequent amendment is filed pursuant to paragraph (b) of this section, *And provided further*, That such subsequent amendment designates as its effective date the date on which the prior post-effective amendment shall become effective pursuant to paragraph (a). If another post-effective amendment relating to the same prospectus is filed pursuant to paragraph (a) of this section before the prior amendments filed pursuant to paragraphs (a) and (b) of this section have become effective, neither the prior amendment filed pursuant to paragraph (a) nor the amendment filed pursuant to paragraph (b) shall become effective pursuant to this section.

* * * * *

Regulatory Flexibility Certification

The Chairman of the Commission has certified that the proposed amendments, if promulgated, will not have a significant economic impact on a substantial number of small entities.

Statutory Authority

The Commission hereby proposes amendments to rule 465 for comment pursuant to the provisions of sections 7, 8 and 19(a) of the Securities Act of 1933 [15 U.S.C. 77g, 77h and 77s(a)].

[7] *See* note 2 *supra*.

By the Commission.
George A. Fitzsimmons,
Secretary.
July 8, 1981.

REGULATORY FLEXIBILITY CERTIFICATION

I, John S.R. Shad, Chairman of the Securities and Exchange Commission, hereby certify pursuant to 5 U.S.C. 605(b) that the proposed amendments to rule 465 [17 CFR 230.465] under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq.] set forth in Securities Act Release No. 6327, if promulgated, will not have a significant economic impact on a substantial number of small entities. The reason for this certification is that the amendments propose changes in filing procedures for post-effective amendments which will reduce or have no effect on the costs involved in preparing and filing documents with the Commission.

Dated: July 8, 1981.
John S.R. Shad,
Chairman.

[FR Doc. 81-20596 Filed 7-13-81; 8:45 am]
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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 25, 31, 54, and 301

[EE-7-78]

Individual Retirement Plans and Simplified Employee Pensions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to individual retirement plans and simplified employee pensions. Changes to the applicable law were made by the Employee Retirement Income Security Act of 1974, the Tax Reform Act of 1976, the Revenue Act of 1978 and the Technical Corrections Act of 1979. The regulations would provide the public with the guidance needed to comply with these Acts and would affect institutions which sponsor individual retirement plans and simplified employee pensions. The regulations also affect employers and individuals who use these plans for retirement income.

DATES: Written comments and requests for a public hearing must be delivered or mailed by September 14, 1981. The amendments would have varying effective dates. The provisions relating to spousal individual retirement plans are generally effective for taxable years beginning after December 31, 1976. The provisions relating to simplified employee pensions are generally effective for taxable years beginning after December 31, 1978. The provisions defining "active participant" for individuals covered by defined benefit offset plans are effective for taxable years beginning after December 31, 1980.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (EE-7-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: William D. Gibbs of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3430) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Gift Tax Regulations (26 CFR Part 25), the Employment Tax Regulations (26 CFR Part 31), the Regulations on Pension Excise Taxes (26 CFR Part 54) and the Procedure and Administration Regulations (26 CFR Part 301) under sections 62, 219, 220, 404, 408, 409, 2503, 3121, 3306, 4973, 4974, and 6693 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to section 2002(d) of the Employee Retirement Income Security Act of 1974 (88 Stat. 966), section 1501 of the Tax Reform Act of 1976 (90 Stat. 1734), sections 152, 156(c) and 157 of the Revenue Act of 1978 (92 Stat. 2797, 2802, 2803), and sections 101(a)(10), (101)(a)(14)(A), 101(a)(14)(B), and 101(a)(14)(E)(ii) of the Technical Corrections Act of 1979 (94 Stat. 201-205). These regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

On August 8, 1980, the **Federal Register** published final regulations relating to individual retirement plans under the Income Tax Regulations (26 CFR Part 1) under sections 219, 408, 409 and under the Pension Excise Taxes (26 CFR Part 54) under section 4974 (45 FR 52782). Also, because of subsequent statutory provisions, some of the proposed regulations published on February 21, 1975 (40 FR 7661) were withdrawn in connection with those final regulations. The preamble to those final regulations indicated that regulations under other statutory provisions relating to retirement plans would be reproposed at a later date.

This document contains these reproposed amendments, other than those relating to the rollover rules under Code sections 402 and 403. The Service intends to repropose these rules at a later date in connection with the regulations under Code sections 402 (a)(5), (6) and (7), and 403 (a)(4), (6) and (8).

Spousal Individual Retirement Plans

Internal Revenue Code section 220 allows an individual to deduct amounts contributed to an individual retirement plan maintained for the individual's benefit and an individual retirement plan maintained for the benefit of the individual's non-employed spouse. The proposed regulations set forth the type of funding arrangements which must be used and additional limitations and restrictions the individual and spouse must meet in order for the individual to obtain this deduction.

Simplified Employee Pensions

Internal Revenue Code section 408 (k) sets forth rules for simplified employee pension ("SEP's"). The proposed regulations, §§ 1.408-7 through -9, indicate to employers and sponsoring institutions what requirements these arrangements must meet. Section 1.404 (h)-1 of the proposed regulations sets forth the special deduction limitations for employers under Code section 404 (h). Sections 1.219-1 (d) (4) and 1.219-3 of the proposed regulations set forth the rules governing the inclusion/deduction rules for employees for employer contributions to SEP's.

An employee will be allowed to deduct an employer contribution to a simplified employee pension. In general, the maximum amount the employee will be allowed to deduct is the lesser of 15 percent of compensation includible in gross income or $7,500. Proposed § 1.219-3 makes it clear that the deduction and the compensation are computed separately with respect to each employer's arrangement. Thus, an employee who has two or more employers can use only the compensation from the employer maintaining the simplified employee pension arrangement in computing the section 219 (b) (7) limitation. On the other hand, if two or more employers of an employee each maintain a simplified employee pension arrangement, the employee will be allowed to deduct each employer's contribution, up to the compensation and dollar limit applied separately to each employer. Special limitations apply to certain related employers under Code section 414 (b) and (c) and to self-employed individuals.

Certain rules have been included to make SEP arrangements more administrable by employers and the Service. Under proposed § 1.408-7 (d) (1) (iii) an employer is not required to make a contribution to the SEP of an otherwise eligible employee who receives less than $200 compensation for a calendar year. This relieves employers of the burden of setting up SEP's to which very shall amounts of money will be contributed (the maximum deductible contribution would equal $30 (15% or $200)). This rule was published by the Service in Announcement 80-112, 1980-36 I.R.B. 35.

Further, under proposed § 1.408-7 (d) (2), employers may execute necessary documents on behalf of employees who are unwilling or unable to execute those documents or whom the employer is unable to locate. This remedial rule prevents an employer's SEP arrangement from being disqualified because of a recalcitrant employee or one who has left the employer's service and is unable to be located by the employer. (See also proposed § 1.408-9 (c) for possible reporting requirements in this instance.) Comments are requested as to what alternative remedial action, in lieu of execution on behalf of employees, employers would wish to take to avoid disqualification of their SEP arrangements. Comments also are requested on this proposed rule as to whether in a particular State there is any law that would preclude this action by the employer on the employee's behalf.

Employer contributions which exceed the amounts called for under the written allocation formula for the SEP arrangement are treated as if made to the employee's individual retirement account or individual retirement annuity, maintained outside the employee's SEP. It is contemplated that the employer, when it discovers the erroneous contribution, will notify the employee of the amount of the non-SEP contribution made in excess of the allocation formula. Because this amount may result in an excess contribution when made the employee may wish to take appropriate action in order to avoid IRA penalties. The normal IRA rules under Code section 219 apply in such a situation. This rule is proposed in order to prevent the entire SEP arrangement from being disqualified due to an inadvertent error on the part of the employer, such as an incorrect calculation of employee compensation. Under Code setion 408(k), the entire SEP arrangement could be disqualified on account of the excess contribution. This rule is proposed to provide relief in such cases. See proposed § 1.408-7(f) and the example of how the rule would operate in a particular case.

Proposed § 1.408-7(c)(2) contains a special rule clarifying the relationship between SEP's and salary reduction agreements. This rule makes it clear that employer contributions to an employee's individual retirement account or annuity that are made under a salary reduction agreement between the employer and employee are not treated as employer contributions to an employee's simplified employee pension. Thus, if the employee may elect either a contribution or current compensation, the contribution is treated as an employee contribution and, therefore, is not eligible for the favorable SEP arrangement rules.

Similarly, other contributions such as voluntary contributions made by the employee, or on behalf of the employee by the employer as the agent for the employee (such as by payroll withholding), are treated as employee contributions.

Even though the employer picks the insitution or substantially influences the employee's choice of the institution to which the employer makes the SEP contribution and which serves as trustee or sponsor for the employee's DEP, the SEP arrangement remains qualified under the Code. Further, this action by the employer is not a prohibition on withdrawal of funds within the meaning of Code section 408(k)(4)(B). The employer should, however, be aware that the Department of Labor may require special reporting for such action. (See 29 CFR 2520.104-48 (1980) and 29 CFR 2520.104-49 (1981).)

Proposed § 1.408-9 contains reporting requirements for SEP's. Employer who use the Service's Model Simplified Employee Pension Arrangement (Form 5305-SEP) and furnish the Model to their employees will satisfy the disclosure requirements relating to adoption of the SEP arrangement. Further, if the employer reports the amount of the SEP contribution on an employee's W-2, the annual reporting requirements will be satisfied. The Department of Labor also has reporting requirements for SEP's, which are in addition to the requirements of the Internal Revenue Service. (See 29 CFR 2520.104-48 (1980) and 29 CFR 2520.104-49 (1981).)

Employers who failed to make required contributions on behalf of employees for calendar year 1979 because the employees were no longer employed at the end of the employer's taxable year may make such "make up" contributions before January 1, 1981. This conforms to Announcement 80-112, 1980-36 I.R.B. 35. This relief is given because employers may not have anticipated the rules contained in that announcement and § 1.408-7(d) (1), (2) and (3), relating to which employees are entitled to receive an allocation. It is expected that employers who make such contributions will comply with the reporting requirements of § 1.408-9 (b) and file amended tax returns. Likewise, employees who receive such contributions are expected to file amended tax returns.

Other Amendments

Conforming and technical amendments made by the Tax Reform Act of 1976, the Revenue Act of 1978, and the Technical Corrections Act of 1979 have been made to the regulations under Code sections 62, 219, 220, 404, 408, 409, 415, 3121, 3306, 4973, 4974, and 6693.

Also, regulations are proposed which define "active participant" under section 219 (b) (2) for individuals who are covered with Federal or State benefits such as social security benefits. These rules were requested by commentators at the public hearing held July 19, 1979, on the reproposed active participant rules, and in other written comments on those proposed regulations published in the **Federal Register** on March 23, 1979 (44 FR 17754). This proposed rule allows employees to make IRA contributions when, in effect, they get no benefit from their employers' plans

Regulatory Flexibility Act

Although this document is a notice of proposed rulemaking which solicits public comment, the Internal Revenue Service has concluded that the regulations proposed herein are interpretative and that the notice and public procedure requirements of 5 U.S.C. 553 do not apply. Accordingly, these proposed regulations do not consititute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written coments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the **Federal Register.**

Drafting Information

The principal author of these proposed regulations is William D. Gibbs of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Parts 1, 25, 31, 54, and 301 are as follows:

Income Tax Regulations (26 CFR Part 1)

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. Section 1.62–1 is amended by revising paragraph (c)(13) to read as follows:

§ 1.62–1 Adjusted gross income.

* * * * *

(c) * * *

(13) Deductions allowed by sections 219 and 220 for contributions to an individual retirement account described in section 408 (a), for an individual retirement annuity described in section 408 (b), or for a retirement bond described in section 409;

Par. 2. Section 1.219–1 is revised by adding: (1) a new subdivision (iv) to paragraph (b) (2), and (2) new paragraphs (d) and (e) to read as follows:

§ 1.219–1 Deduction for retirement savings.

* * * * *

(b) *Limitations and restrictions.* * * *

(2) *Restrictions.* * * *

(iv) *Alternative deduction.* No deduction is allowed under subsection (a) for the taxable year if the individual claims the deduction allowed by section 220 (relating to retirement savings for certain married individuals) for the taxable year.

* * * * *

(d) *Time when contributions deemed made*—(1) *Taxable years beginning before January 1, 1978.* For taxable years beginning before January 1, 1977, a taxpayer must make a contribution to an individual retirement plan during a taxable year in order to receive a deduction for such taxable year. For taxable years beginning after December 31, 1976, and before January 1, 1978, a taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than 45 days after the end of such taxable year. A contribution made not later than 45 days after the end of a taxable year shall be treated as made on account of such taxable year if the indivudual specifies in writing to the trustee, insurance company, or custodian that the amounts contributed are for such taxable year.

(2) *Taxable years beginning after December 31, 1977.* For taxable years beginning after December 31, 1977, a taxpayer shall be deemed to have made a contribution on the last day of the preceding taxable year if the contribution is made on account of such taxable year and is made not later than the time prescribed by law for filing the return for such taxable year (including extensions thereof). A contribution made not later than the time prescribed by law for filing the return for a taxable year (including extensions thereof) shall be treated as made on account of such taxable year if it is irrevocably specified in writing to the trustee, insurance company, or custodian that the amounts contributed are for such taxable year.

(3) *Time when individual retirement plan must be established.* For purposes of this paragraph, an individual retirement plan need not be established until the contribution is made.

(4) *Year of inclusion in income.* Any amount paid by an employer to an individual retirement account, for an individual retirement annuity or for an individual retirement bond (including an individual retirement account or individual retirement annuity maintained as part of a simplified employee pension plan) shall be included in the gross income of the employee for the taxable year for which the contribution is made.

(e) *Excess contributions treated as contribution made during subsequent year for which there is an unused limitation*—(1) *In general.* If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer, whether or not a deduction is actually claimed, shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) The amount of such excess, or

(ii) The amount of the excess contributions for such taxable year (determined under section 4973 (b)(2) without regard to subparagraph (C) thereof).

(2) *Amount contributed.* For purposes of this paragraph, the amount contributed—

(i) Shall be determined without regard to this paragraph, and

(ii) Shall not include any rollover contribution.

(3) *special rule where excess deduction was allowed for closed year.* Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 220 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(4) *Effective date.* (i) This paragraph shall apply to the determination of deductions for taxable years beginning after December 31, 1975.

(ii) If, but for this subdivision, an amount would be allowable as a deduction by reason of section 219 (c)(5) for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.

(5) *Examples.* The provisions of this paragraph may be illustrated by the following examples. (Assume in each example, unless otherwise stated, that B is less than age 70½ and is not covered by a simplified employee pension or a plan described in section 219 (b)(2).)

Example (1). (i) B, a calendar-year taxpayer, earns $8,000 in compensation includible in gross income for 1979. On December 1, 1979, B establishes an individual retirement account (IRA) and contributes $1,500 to the account. B does not withdraw any money from the IRA after the initial contribution. Under section 219 (b)(1), the maximum amount that B can deduct for 1979 is 15% of $8,000 or $1,200. B has an excess contribution for 1979 of $300.

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,000 contribution to his IRA for 1980.

(iii) Although B made only a $1,000 contribution to his IRA for 1980, under the rules contained in this paragraph, B is treated as having made an additional contribution of $300 for 1980 and will be allowed to deduct $1,300 as his 1980 IRA contribution.

Example (2). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,500 contribution to his IRA for 1980.

(iii) B will be allowed a $1,500 deduction for 1980 (the amount of his contribution). B will not be allowed a deduction for the $300 excess contribution made in 1979 because the maximum amount allowable for 1980 does not exceed the amount contributed.

Example (3). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,400 contribution to his IRA for 1980.

(iii) For 1980, B will be allowed to deduct his contribution of $1,400 and $100 of the excess contribution made for 1979. He will not be allowed to deduct the remaining $200 of the excess contribution made for 1979 because that would make his deduction for 1980 more than $1,500, his allowable deduction for 1980.

(iv) For 1981, B has compensation includible in gross income of $15,000. B makes a $1,300 contribution to his IRA for 1981.

(v) B will be allowed to deduct the remaining $200 and his $1,300 contribution for 1981.

Example (4). (i) For 1979, the facts are the same as in *Example (1)*.

(ii) For 1980, B has compensation includible in gross income of $12,000. B makes a $1,000 contribution to his IRA for 1980. B is allowed to deduct the $300 excess contribution for 1980 but fails to do so on his return. Consequently, B deducts only $1,000 for 1980.

(iii) Under no circumstances will B be allowed to deduct the $300 excess contribution made for 1979 for any taxable year after 1980 because B is treated as having made the contribution for 1980.

Example (5). (i) For 1979, the facts are the same as in *Example (1)*.

(ii) For 1980, B has compensation includible in gross income of $15,000 and is an active participant in a plan described in section 219 (b) (2) (A).

(iii) B will not be allowed to deduct for 1980 the $300 excess contribution for 1979 because the maximum amount allowable as a deduction under sections 219 (b) (1) and 219 (b) (2) is $0.

Par. 3. Section 1.219-2 is amended by: (1) revising the first sentence of paragraph (b) (1); (2) renumbering paragraph (b) (2), (3), and (4) as paragraph (b) (3), (4) and (5), respectively, and adding a new paragraph (b) (2) before the renumbered paragraph (b) (3), (4) and (5); (3) revising paragraph (f) and (4) adding new examples (3), (4) and (5) after *Example (2)* in paragraph (h). These revised and added provisions read as follows:

§ 1.219-2 Definition of active participant.

* * * * *

(b) *Defined benefit plans*—(1) *In general.* Except as provided in subparagraphs (2), (3), (4) and (5) of this paragraph, an individual is an active participant in a defined benefit plan if for any portion of the plan year ending with or within such individual's taxable year he is not excluded under the eligibility provisions of the plan. * * *

(2) *Special rule for offset plans.* For taxable years beginning after December 31, 1980, an individual who satisfies the eligibility requirements of a plan under which benefits are offset by Social Security or Railroad Retirement benefits is not considered an active participant by virtue of participation in such plan for a particular plan year if such individual's compensation for the calendar year during which such plan year ends does not exceed the offset plan's breakpoint compensation amount for such plan year. Breakpoint compensation is the maximum compensation determined for the plan for a plan year tht any participant could earn and have a projected benefit from the offset plan of $0. For purposes of determining the projected plan benefit, the following assumptions are made: plan participation begins at age 25 and maximum credited service is earned for participation from age 25 to age 65 regardless of the participant's actual participation; plan benefits, including the offset, are based on W-2 earnings from the employer for such calendar year regardless of the definition of compensation on which plan benefits are based; and the projected Social Security Primary Insurance Amount (PIA) is computed under a formula that the Commissioner may, from time to time, prescribe for this purpose.

* * * * *

(f) *Certain individuals not active participants*—(1) *Election out of plan.* For purposes of this section, an individual who elects pursuant to the plan not to participate in the plan will be considered to be ineligible for participation for the period to which the election applies. In the case of a defined benefit plan, such an election shall be effective no earlier than the first plan year commencing after the date of the election.

(2) *Members of reserve components.* A member of a reserve component of the armed forces (as defined in section 261(a) of Title 10 of the United States Code) is not considered to be an active participant in a plan described in section 219(b)(2)(A)(iv) for a taxable year solely because he is a member of a reserve component unless he has served in excess of 90 days on active duty (other than military duty for training) during the year.

(3) *Volunteer firefighters.* An individual whose participation in a plan described in section 219(b)(2)(A)(iv) is based solely upon his activity as a volunteer firefighter and whose accrued benefit as of the beginning of the taxable year is not more than an annual benefit of $1,800 (when expressed as a single life annuity commencing at age 65) is not con 'dered to be an active participant in such a plan for the taxable year.

* * * * *

(h) *Examples.* * * *

Example (3). (i) For plan year X the annual projected Social Security PIA is determined as follows:

Compensation range [1]	PIA formula [1]
$0 to $1,626	PIA = $1,464.
$1,627 to $2,160	PIA = 90 (compensation).
$2,161 to $13,020	PIA = 32 (compensation) + $1,253.
$13,021 to $22,900	PIA = 15 (compensation) + $3,466.
$22,901 and over	PIA = $6,901.

[1] These numbers are for illustrative purposes only.

(ii) V is a defined benefit plan which provides a normal retirement benefit of 1.5% of high five-year average earnings excluding overtime pay, minus 2% of Social Security PIA, the difference multiplied by years of plan participation up to a maximum of 30 years. V provides that individuals commence plan participation on their date of employment. Normal retirement age is 62. V's breakpoint compensation for the plan year ending in year X can be determined as follows:

I. Determine V's projected benefits:

An individual credited with 40 years of service (from age 25 to 65) would have a projected benefit of:

(30) (1.5% (compensation) − 2% (PIA))

or

45% (compensation) − 60% (PIA).

Note that in the determination of the projected benefit, the normal retirement age is assumed to be age 65 rather than the actual normal retirement age of 62, the participant is assumed to have 40 years of credited service, and the plan definition of compensation is assumed to be the same as is used to compute the Social Security benefit.

II. Determine V's formula compensation changepoints. The formula compensation changepoints are amounts where the projected benefit formula, expressed in terms of compensation, changes:

Since V's benefit formula applies uniformly to all compensation, the compensation changepoints are determined by the PIA portion only, and are

a. $1,626.

b. 2,160.

c. 13,020.

d. 22,900.

III. Determine which of the formula compensation changepoints first produces a projected benefit greater than O. This can be done by testing the projected benefit for compensation amounts equal to V's compensation changepoints:

a. Formula compensation changepoint equal to $1,626.

i. Projected benefit = 45% × 1,626 − 60% × 1,464 = 0.

V's compensation breakpoint, therefore, exceeds $1,626.

b. Formula compensation changepoint equal to $2,160.

i. Projected benefit = 45% × 2,160 − 60% × (90 × 2,160) = 0.

V's compensation breakpoint, therefore, exceeds $2,160.

c. Formula compensation changepoint equal to $13,020.

i. Projected benefit = 45% × 13,020 − 60% × (.32 × 13,020 + 1,253) = 2,607.

V's compensation breakpoint is, therefore, in the compensation range $2,161 to $13,020.

IV. Determine V's compensation breakpoint within the $2,161 to $13,020 compensation range.

V's compensation breakpoint can be determined by finding the greatest compensation that will result in a projected benefit of 0 for this compensation range:

a. 45% × compensation − 60% × (.32 × compensation + 1,253) = 0.

b. Eliminate the parentheses in equation a by multiplying each of the terms within the parentheses by − 60%. 45% × compensation − 19.2% × compensation − 751.80 = 0.

c. Add 751.80 to both sides of equation in b and combine the first two terms. 25.8% × compensation = 751.80.

d. Dividing both sides of the equation in c by 25.8%, V's breakpoint compensation for 1979 = $2,914.

V. Therefore, individuals whose W-2 earnings from the employer do not exceed $2,914 in year X are not considered active participants by virtue of participating in Plan V.

Example (4). For year X the annual projected Social Security PIA is determined as in *Example (3).*

T is a defined benefit plan which provides a normal retirement benefit equal to 20% of final average earnings plus 10% of such earnings in excess of $2,000 minus 45% of PIA, the net result reduced pro-rata for participation less than 15 years. Participation commerces upon attainment of age 20. Normal retirement age is 65.

I. Determine T's projected benefit for year X.

An individual credited with 40 years of service (from age 25 to 65) would have projectd benefit of:

20% of compensation plus 10% of compensation in excess of $2,000, if any
minus
45% of PIA

II. Determine T's formula compensation changepoints.

$2,000 is a formula compensation changepoint, in addition to the four PIA changepoints, since T's benefit formula changes at this compensation amount. The five formula compensation changepoints are:

a. $1,626.
b. 2,000.
c. 2,160.
d. 13,020.
e. 22,900.

III. Determine which of T's formula compensation changepoints first produces a projected benefit greater than 0.

a. Compensation changepoint equal to $1,626.

i. Projected benefit = 20% × 1,626 + 10% × 0 − 45% × 1,424 = 0.

T's compensation breakpoint, therefore, exceeds $1,626.

b. Compensation changepoint equal to $2,000

i. Projected benefit = 20% × 2,000 + 10% × 0 − 45% × (.90 × 2,000) = 0.

T's compensation breakpoint, therefore, exceeds $2,000.

c. Compensation breakpoint equal to $2,160.

i. Projected benefit = 20% × 2,160 + 10% × (2,160 − 2,000) − 45% × (.90 × 2,160) = 0.

T's compensation breakpoint, therefore, exceeds $2,160.

d. Compensation changepoint equal to $13,020.

i. Projected benefit = 20% × 13,020 + 10% (13,020 − 2,000) − 45% × (.32 × 1 3,020 + 1,253) = 1,267.

T's compensation breakpoint, therefore, in the compensation range $2,160 to $13,020.

IV. Determine T's breakpoint compensation within the $2,160 to $13,020 range.

T's compensation breakpoint can be determined by finding the greatest compensation that will result in a projected benefit of 0 for this range:

a. 20% × comp. + 10% × (comp. − 2,000) − 45% × (.32 × comp. + 1,253) = 0.

b. Eliminating both parenthesis in equation a. by multiplying each of the terms within by the appropriate percentage.

20% × comp. + 10% × comp. − 200 − 14.4% × comp. − 563.85 = 0.

c. Add 763.85 to both sides of equation and combine remaining terms in equation b.

15.6% × comp. = 763.85.

d. Dividing each side of equation c. by 15.6%, T's breakpoint compensation for year X = $4,896.

V. Therefore, individuals whose W-2 earnings do not exceed $4,896 in year X are not considered active participants by virtue of participating in Plan T.

Example (5). Assume the same facts as *Example (4),* except that T also provides a minimum monthly benefit of $100 for participants with 15 or more years of plan participation. There is no compensation amount which will produce a projected benefit of $0. Therefore, all individuals who satisfy T's eligibility requirements are considered active participants.

Par 4. There are added after § 1.219-2 the following new sections:

§ 1.219-3 Limitation on simplified employee pension deductions.

(a) *General rule*— (1) *In general.* Under section 219(b)(7), if an employer contribution is made on behalf of an employee to a simplified employee pension described in section 408(k), the limitations of this action, and not section 219 (b)(1) and § 1.219-1(b)(1), shall apply for purposes of computing the maximum allowable deduction for that individual employee. The other rules of section 219 and §§ 1.219-1 and 1.219-2 apply for purposes of computing an individual's deduction except as modified by this section.

(2) *Employer limitation.* The maximum deduction limitation under section 219(a) for an employee with respect to an employer contribution to the employee's simplified employee pension under that employer's arrangement cannot exceed an amount equal to the lesser of—

(i) 15 percent of the employee's compensation from that employer (determined without regard to the employer contribution to the simplified employee pension) includible in the employee's gross income for the taxable year, or

(ii) The amount contributed by that employer to the employee's simplified employee pension and included in gross income (but not in excess of $7,500).

(3) *Special rules*—(i) *Compensation.* Compensation referred to in paragraph (a)(2)(i) has the same meaning as under § 1.219-1(c)(1) except that it includes only the compensation from the employer making the contribution to the simplified employee pension. Thus, if an individual earns $50,000 from employer A and $20,000 from employer B and employer B contributes $4,000 to a simplified employee pension on behalf of the individual, the maximum amount the individual will be able to deduct under section 219(b)(7) is 15 percent of $20,000, or $3,000.

(ii) *Special rule for officers, shareholders, and owner-employees.* In the case of an employee who is an officer, shareholder, or owner-employee described in section 408(k)(3) with respect to a particular employer, the $7,500 amount referred to in paragraph (a)(2)(ii) shall be reduced by the amount of tax taken into account with respect to such individual under section 408 (k)(3)(D).

(iii) *More than one employer arrangement.* Except as provided in paragraph (c), below, the maximum deduction under paragraph (a)(2) for an individual who receives simplified employee pension contributions under two or more employers' simplified employee pension arrangements cannot exceed the sum of the maximum deduction limitations computed separately for that individual under each such employer's arrangement.

(iv) *Section 408 rules.* Under section 408(j), for purposes of applying the $7,500 limitations under section 408(a)(1), (b)(1), (b)(2)(B) and (d) (5) (§ 1.408-2 (b)(1), § 1.408-3(b)(2) and § 1.408-4(h)(3)(i), respectively), the $7,500 limitations shall be applied separately with respect to each employer's contributions to a individual's simplified employee pension.

(b) *Limitations not applicable to SEP contributions*—(1) *Active participant.* The limitations on coverage by certain other plans in section 219 (b) (2) and § 1.219-1 (b)(2)(i) shall not apply with respect to the employer contribution to a simplified employee pension. Thus, an employee is allowed a deduction for an employer's contribution to a simplified employee pension even though he is an active participant in an employer's qualified plan.

(2) *Contributions to simplified employee pensions after age 70½.* The denial of deductions for contributions after age 70½ contained in section 219(b)(3) and § 1.219–1(b)(2)(ii) shall not apply with respect to the employer contribution to a simplified employee pension.

(c) *Multiple employer, etc. limitations*—(1) *Section 414 (b) and (c) employers.* In the case of a controlled group of employers within the meaning of section 414 (b) or (c), the maximum deduction limitation for an employee under paragraph (a)(2) shall be computed by treating such employers as one employer maintaining a single simplified pension arrangement and by treating the compensation of that employee from such employers as if from one employer. Thus, for example, for a particular employee the 15 percent limitation on compensation would be determined with regard to the compensation from all employers within such group. Further, the maximum deduction with respect to such group could not exceed $7,500.

(2) *Self-employed individuals.* In the case of an employee who is a self-employed individual within the meaning of section 401(c)(1) with respect to more than one trade or business, the maximum deduction limitation for such an employee under paragraph (a)(2) shall not exceed the lesser of the sum of such limitation applied separately with respect to the simplified employee pension arrangement of each trade or business or such limitation determined by treating such trades or businesses as if they constituted a single employer.

(d) *Additional deduction for employee contributions.* If the maximum allowable deduction for an individual employee determined under paragraph (a) for employer contributions to that individual's simplified employee pensions is less than $1,500, the individual shall be entitled to an additional deduction for contributions to individual retirement programs maintained on his behalf. The additional deduction shall equal the excess, if any, of the section 219(b)(1) and § 1.219–1(b)(1) maximum deduction limitation over the maximum deduction limitation determined under paragraph (a). For purpose of determining the compensation limit of section 219(b)(1), employer simplified employee pension contributions shall not be taken into account. Thus, for example, if $1,000 is deductible by individual A for employer contributions under a simplified employee pension arrangement and A,s compensation, not including the $1,000 SEP contribution, is $10,000, than A would be entitled to an additional deduction of $500.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a calendar-year, cash basis taxpayer. It adopts a simplified employee pension agreement in 1980 and wishes to contribute the maximum amount on behalf of each employee for 1980. Individual E is a calendar-year taxpayer who is employed solely by Corporation X in 1980. Beginning in June 1980, Corporation X pays $100 each month into a simplified employee pension maintained on behalf of E. X makes a total payment to E's simplified employee pension during the year of $700. E's other compensation from X for the year totals $15,000. The maximum amount which E will be allowed to deduct as a simplified employee pension contribution is 15% of $15,000, or $2,250. Therefore, X may make an additional contribution for 1980 to E's simplified employee pension of $1,550. X makes this additional contribution to E's simplified employee pension in February of 1981. E's total compensation for 1980 includible in gross income is $15,000 + $2,250 or $17,250.

Example (2). (i) Corporation G is a calendar-year taxpayer which does not maintain an integrated plan is defined in section 408(k)(3)(E). It adopts a simplified employee pension agreement for 1980. It wishes to contribute 15% of compensation on behalf of each employee reduced by its tax under section 3111(a). The corporation has 4 employees, A, B, C, and D. D is a shareholder. The compensation for these employees for 1980 is as follows:

A=$10,000
B=20,000
C=30,000
D=60,000

(ii) The amount of money which the corporation will be allowed to contributed on behalf of each employee under this allocation formula and the amount of the employer contribution each employee will be allowed to deduct is set forth in the following table:

Employee	Compensation	Lesser of $7500 or 15% of Comp.	3111(a)[1] Tax	SEP[2] Contribution	Sec. 219(b)(7) deduction
A	$10,000	$1,500	$508.00	$992.00	$992.00
B	20,000	3,000	1,016.00	1,984.00	1,984.00
C	30,000	4,500	1,315.72	3,184.28	3,184.28
D	60,000	7,500	1,315.72	6,184.28	6,184.28

[1] The section 3111 (a) tax is computed by multiplying compensation up to the taxable wage base ($25,900 for 1980) by the tax rate (5.08% for 1980).

[2] Simplified Employee Pension.

Example (3). Corporations A and B are calendar year taxpayers. Corporations A and B are not members of a controlled group of employers within the meaning of section 414 (b) or (c). Individual M is employed full-time by Corporation A and part-time by Corporation B. Corporation A adopts a simplified employee pension agreement for calendar year 1980 and agrees to contribute 15% of compensation for each participant. M is a participant under Corporation A's simplified employee pension agreement and earns $15,000 for 1980 from Corporation A before A's contribution to his simplified employee pension. M also earns $5,000 as a part-time employee of Corporation B for 1980. Corporation A contributes $2,500 to M's simplified employee pension. The maximum amount that M will be allowed to deduct under section 219(b)(7) for 1980 is 15% of $15,000 or $2,250. The remaining $250 is an excess contribution because M cannot consider the compensation earned from Corporation B under § 1.219–3(a)(3)(i).

Example (4). Individual P is employed by Corporation H and Corporation O. Corporation H and O are not members of a controlled group of employers within the meaning of section 414 (b) or (c). Both Corporation H and Corporation O maintain a simplified employee pension arrangement and contribute 15 percent of compensation on behalf of each employee. P earns $50,000 from Corporation H and $60,000 from Corporation O. Corporation H and O each contributes $7,500 under its smplified employee pension arrangement to an individual retirement account maintained on behalf of P. P will be allowed to deduct $15,000 for employer contributions to simplified employee pensions because each employer has a simplified employee pension arrangement and the SEP contributions by Corporation H and O do not exceed the applicable $7,500–15 percent limitation.

§ 1.220–1 Deduction for retirement savings for certain married individuals.

(a) *In general.* Subject to the limitations and restrictions of paragraphs (c), (d) and (e) and the special rules of paragraph (f) of this section, there shall be allowed a deduction under section 62 from gross income of amounts paid for the taxable year of an individual by or on behalf of such individual for the benefit of himself and his spouse to an individual retirement account described in section 408(a), for an individual retirement annuity described in section 408(b), or for an individual retirement bond described in section 409. The amounts contributed to an individual retirement account, for an individual retirement annuity, or for an individual retirement bond by or on behalf of an individual for the benefit of himself and his spouse shall be deductible only by such individual. The first sentence of this paragraph shall apply only in the case of a contribution of cash; a contribution of property other than cash is not allowable as a deduction. In the case of an individual retirement bond, a deduction will not be allowed if the bond is redeemed within 12 months of its issue date.

(b) *Definitions*—(1) *Compensation.* For purposes of this section, the term "compensation" has the meaning set forth in § 1.219–1(c)(1).

(2) *Active participant.* For purposes of this section, the term "active participant" has the meaning set forth in § 1.219–2.

(3) *Individual retirement subaccount.* For purposes of this section, the term individual retirement subaccount is that part of an individual retirement account maintained for the exclusive benefit of the individual or the individual's spouse and which meets the following requirements:

(i) The individual or spouse for whom the subaccount is maintained has exclusive control over the subaccount after deposits have been made,

(ii) The subaccount, by itself, meets the requirements of section 408(a), except that it is not a separate trust,

(iii) The trustee or custodian maintains records indicating the ownership of the funds, and

(iv) The individual and spouse do not jointly own the individual retirement account of which the subaccount is a part.

(c) *Types of funding arrangements permitted.* The deduction under paragraph (a) of this section shall be allowed only if one of the following types of funding arrangements is used:

(1) A separate individual retirement account, individual retirement annuity, or individual retirement bond is established or purchased for the benefit of the individual and a separate individual retirement account, individual retirement annuity or individual retirement bond is established or purchased for the individual's spouse.

(2) A single individual retirement account described in section 408(a) is established or purchased and such account has an individual retirement subaccount for the benefit of the individual and an individual retirement subaccount for the benefit of the spouse. The single individual retirement account cannot be owned jointly by the husband and wife.

(3) An individual retirement account described in section 408(c) is maintained by an employer or employee association and such account has arrangements described in subparagraphs (1) or (2).

(d) *Maximum deduction.* The amount allowable as a deduction under section 220(a) to an individual for any taxable year may not exceed—

(1) Twice the amount paid (including prior excess contributions) to the account, subaccount, annuity, or for the bond, established for the individual or for the spouse to or for which the lesser amount was paid for the taxable year,

(2) An amount equal to 15 percent of the compensation includible in the individual's gross income for the taxable year, or

(3) $1,750

whichever is the smallest amount.

(e) *Limitations and restrictions*—(1) *Alternative deduction.* No deduction is allowable under section 220(a) for the taxable year if the individual claims the deduction allowed by section 219(a) for the taxable year.

(2) *Individual or spouse covered by certain other plans.* No deduction is allowable under section 220(a) to an individual for the taxable year if for any part of such year—

(i) He or his spouse was an active participant (as defined in § 1.219–2), or

(ii) Amounts were contributed by his employer, or his spouse's employer, on the individual's or spouse's behalf for an annuity contract described in section 403 (b) (whether or not his, or his spouse's, rights in such contract are nonforfeitable).

(3) *Contributions after age 70½.* No deduction is allowable under section 220 (a) with respect to any payment which is made for a taxable year of an individual if either the individual or his spouse has attained age 70½ before the close of such taxable year.

(4) *Recontributed amounts.* No deduction is allowable under section 220 (a) for any taxable year of an individual with respect to a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3), or 409(b)(3)(C).

(5) *Amounts contributed under endowment contracts.* The rules for endowment contracts under section 220 are the same as the provisions for such contracts under § 1.219–1(b)(3).

(6) *Employed spouses.* No deduction is allowable under section 220(a) if the spouse of the individual has any compensation (as defined in § 1.219–1(c)(1) determined without regard to section 911) for the taxable year of such spouse ending with or within the taxable year of the individual.

(f) *Special rules*—(1) *Community property.* Section 220 is to be applied without regard to any community property laws.

(2) *Time when contributions deemed made.* The time when contributions are deemed made is determined in the same manner as under section 219(c)(3). See § 1.219–1(d).

(g) *Excess contributions treated as contribution made during subsequent year for which there is an unused limitation*—(1) *In general.* If for the taxable year the maximum amount allowable as a deduction under this section exceeds the amount contributed, then the taxpayer, whether or not a deduction is actually claimed, shall be treated as having made an additional contribution for the taxable year in an amount equal to the lesser of—

(i) The amount of such excess, or

(ii) The amount of the excess contributions for such taxable year (determined under section 4973(b)(2) without regard to subparagraph (C) thereof).

For purposes of computing the maximum deduction under section 220(b)(1), the excess contribution for a previous year shall be treated as made for the current year.

(2) *Amount contributed.* For purposes of this paragraph, the amount contributed—

(i) Shall be determined without regard to this paragraph, and

(ii) Shall not include any rollover contribution.

(3) *Special rule where excess contribution was allowed for closed year.* Proper reduction shall be made in the amount allowable as a deduction by reason of this paragraph for any amount allowed as a deduction under this section or section 219 for a prior taxable year for which the period for assessing a deficiency has expired if the amount so allowed exceeds the amount which should have been allowed for such prior taxable year.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). (i) H, a calendar-year taxpayer, earns $10,000 in compensation includible in gross income for 1979. H is married to W, also a calendar-year taxpayer, who has no compensation for 1979. For 1979, neither H nor W is covered by certain other plans within the meaning of section 220(b)(3). On November 24, 1979, H establishes an individual retirement account (IRA) for himself and an individual retirement account for W. H contributes $850 to each account. Neither H nor W withdraws any money from either account after the initial contribution. Under section 220(b)(1) the maximum amount that H can deduct for 1979 is 15 percent of the compensation includible in his gross income or $1,500. H has made an excess contribution of $200 for 1979.

(ii) for 1980, H has compensation includible in gross income of $12,000. W has no compensation for 1980. For 1980, neither H nor W is covered by certain other plans, within the meaning of section 220(b)(3). No contributions are made to the IRA of H or W for 1980.

(iii) Although H made no contributions to either his or W's IRA for 1980, under the rules contained in this paragraph, H is treated as having made an additional contribution of $100 to his IRA and $100 to W's IRA for 1980 and will be allowed to deduct $200 as his 1980 IRA contribution.

Example (2). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, H has compensation of $15,000 includible in gross income and is not covered by any other plans within the meaning of section 219(b)(2). W also goes to work in 1980 and has compensation of $6,000, but is not covered by certain other plans within the meaning of section 219(b)(2). H will not be treated as having made a deductible contribution of a previous year's excess contribution within the meaning of section 220(c)(6) because W has compensation for 1980. However, both H and W now meet the deduction standards of section 219 and each will be treated as having made a deductible contribution of $100 to their separate IRA's for 1980 under section 219(c)(5).

Example (3). (i) For 1979, the facts are the same as in *Example (1).*

(ii) For 1980, H has compensation of $15,000 includible in gross income and is covered by certain other plans within the meaning of section 220(b)(3). W has no compensation for 1980 and is not covered by certain other plans within the meaning of section 220(b)(3). H will not be treated as having made a deductible contribution of a previous year's excess contribution within the meaning of section 219(c)(5) or 220(c)(6) because H is covered by other plans for 1980 and has no allowable deduction under section 219 or 220.

(iii) W will not be treated as having made a deductible contribution of a previous year's excess contribution within the meaning of section 219(c)(5) because W has no compensation for 1980 and thus no allowable deduction under section 219.

(h) *Effective date.* (1) This section is effective for taxable years beginning after December 31, 1976.

(2) If, but for this subparagraph, an amount would be allowable as a deduction by reason of section 220(c)(6) and paragraph (g) for a taxable year beginning before January 1, 1978, such amount shall be allowable only for the taxpayer's first taxable year beginning in 1978.

Par. 5. There is added after § 1.404(e)-1A the following new section:

§ 1.404(h)-1 Special rules for simplified employee pensions.

(a) *In general.* (1) Employer contributions to a simplified employee pension shall be treated as if they are made to a plan subject to the requirements of section 404. Employer contributions to a simplified employee pension are subject to the limitations of subparagraphs (2), (3), (4) and (5). For purposes of this paragraph participants means those employees who satisfy the age, service and other requirements to participate in a simplified employee pension. For purposes of this paragraph, "compensation" means all of the compensation paid by the employer except either that for which a deduction is allowable under section 404(h) for simplified employee pensions or that for which a deduction is allowable under a plan that qualifies under section 401(a), including a plan that qualifies under section 404(a)(2) or 405.

(2) Employer contributions made for a calendar year are deductible for the taxable year of the employer with which or within which the calendar year ends.

(3) Contributions made within 3½ months after the close of a calendar year are treated as if they were made on the last day of such calendar year if they are made on account of such calendar year.

(4) The amount deductible for a taxable year for a simplified employee pension shall not exceed 15 percent of the compensation paid to the employees who are participants during the calendar year ending with or within the taxable year.

(5) The excess of the amount contributed over the amount deductible for a taxable year shall be deductible in the succeeding taxable years in order of time subject to the 15 percent limit of subparagraph (4).

(b) *Effect on stock bonus and profit-sharing trust.* For any taxable year for which the employer has a deduction under section 404(h)(1), the otherwise applicable limitations in section 404(a)(3)(A) shall be reduced by the amount of the allowable deductions under section 404(h)(1) with respect to participants in the stock bonus or profit-sharing trust.

(c) *Effect on limit on deductions.* For any taxable year for which the employer has a allowable deduction under section 404(h)(1), the otherwise applicable 25 percent limitations in section 404(a)(7) shall be reduced by the amount of the allowable deductions under section 404(h)(1) with respect to participants in the stock bonus or profit-sharing trust.

(d) *Effect on self-employed individuals or shareholder-employee.* The limitations described in paragraphs (1), (2)(A), and (4) of section 404(e) or described in section 1379(b)(1) for any taxable year shall be reduced by the amount of the allowable deductions under section 404(h)(1) with respect to an employee within the meaning of section 401(c)(1) or a shareholder-employee (as defined in section 1379(d)).

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation X is a calendar-year taxpayer. On January 2, 1980, it adopts a simplified employee pension arrangement. At the end of 1980, it determines that it has paid $230,000 to all of its employees. Eight of its employees met its eligibility provisions for contributions to simplified employee pensions and their compensation totaled $140,000 before any contributions were made to their simplified employee pensions. Corporation X will be allowed to deduct its contributions to its employees' simplified employee pensions, not to exceed 15% of $140,000 or $21,000.

Example (2). Corporation Y is a calendar-year taxpayer which maintains a simplified employee pension agreement and a profit-sharing plan. The corporation has 100 employees. For the taxable year of 1980, it makes contributions to the simplified employee pensions of 75 of its employees. These contributions are 10 percent of compensation received in 1980. These same 75 employees are also participants in the corporation's profit-sharing plan. These 75 employees had total compensation paid during 1980 of $1,125,000. The corporation can deduct $112,500 under section 404(h) as its contributions to the simplified employee pension agreement. The corporation must reduce the otherwise applicable allowable deduction for contributions to the profit-sharing plan on behalf of these employees by the $112,500.

Example (3). Corporation Z is a calendar-year taxpayer which maintains a simplified employee pension arrangement and a profit-sharing plan. The corporation has 100 employees. For the taxable year 1980, it make contributions to the simplified employee pensions of 75 of its employees. These contributions are 10 percent of compensation received in 1980. Twenty-five of these employees are also participants in the corporation's profit-sharing plan. Each of these 75 employees had compensation for the year of $15,000,or total compensation of $1,125,000. The corporation deducts $112,500 under section 404(h) as its contribution to the simplified employee pension arrangement. The corporation must reduce the otherwise applicable allowable deduction for contributions to the profit-sharing plan on behalf of the 25 employees by $37,500, the amount contributed to the simplified employee pensions on behalf of employees covered by the profit-sharing plan.

Example (4). Corporation K is a taxpayer with a taxable year of December 1—Novermber 30. On December 15, 1979, it adopts a simplified employee pension arrangement for its employees. It would like to make contributions to the plan on behalf of its employees for calendar year 1979. In order to make contributions to its employees' simplified employee pensions for calendar year 1979, the corporation must make the contributions by April 15, 1980. In order to receive a deduction for its taxable year ending November 30, 1980, for the contributions for calendar year 1979, the corporation must make the contributions by April 15, 1980.

Par. 6. Section 1.408–2 is amended by revising paragraph (c)(3) to read as follows:

§ 1.408–2 Individual retirement accounts.

* * * * *

(c) * * *

(3) *Special requirement.* There must be a separate accounting for the interest of each employee or member (or spouse of an employee or member).

* * * * *

Par. 7. Section 1.408–3 is revised by adding new paragraphs (b) (6) and (f). These added provisions read as follows:

§ 1.408–3 Individual retirement annuities.

* * * * *

(b) * * *

(6) *Flexible premium.* (i) In the case of annuity contracts issued after November 6, 1978, the premiums under such contracts are not fixed. See paragraph (f) for the definition of an annuity contract under which "the premiums are not fixed."

(ii) In the case of a fixed premium individual retirement annuity or individual retirement endowment contract issued before November 7, 1978, the issuer of such contract may offer the holder of the contract the option of exchanging such contract for a flexible premium contract. If such an exchange is made before January 1, 1981, the exchange shall not constitute a distribution and shall be nontaxable.

* * * * *

(f) *Flexible premium annuity contract*—(1) *In general.* A flexible premium retirement annuity contract shall be considered a contract under which "the premiums are not fixed" if it provides the following.

(i) At no time after the initial premium for the contract has been paid is there a specified renewal premium required.

(ii) The contract must allow for the continuance of the contract (as a paid-up annuity) under its nonforfeiture provision if premium payments cease altogether.

(iii) The contract, if being continued on a paid-up basis (*i.e.,* if it has not been terminated by a payment in cash), will be reinstated at any date prior to its maturity date upon payment of a premium to the insurer.

(2) *Exceptions.* (i) The insurer may require that if a premium is remitted, it will be accepted only if the amount remitted is some stated amount, not in excess of $50.

(ii) The contract may provide that if no premiums have been received under the contract for two (2) full years and the paid-up annuity benefit at maturity of the plan stipulated in the contract arising from the premium paid prior to such two-year period would be less than $20 a month, the insurer may, at its option, terminate the contract by payment in cash of the then present value of the paid-up benefit (computed on the same basis specified in the contract for determining the paid-up benefit).

(3) *Permissible provisions.* A flexible premium contract will not be considered to have fixed premiums merely because—

(i) A maximum limit (which may be expressed as a multiple of the premium paid in the first year of the contract) is placed on the amount of the preimum that the insurer will accept in any year,

(ii) An annual charge is made against the policy value,

(iii) A fee (which may be composed of a flat dollar amount plus an amount equal to the required premium tax imposed by the state government) is charged upon the acceptance of each premium by the insurer, or

(iv) The contract requires a level annual premium for a supplementary benefit, such as a waiver of premium benefit.

Par. 8. Section 1.408–4 is amended by: (1) Adding new paragraphs (b)(3), (b)(4)(ii), and (c)(3)(ii); and (2) adding a new paragraph (h). These added provisions read as follows:

§ 1.408–4 Treatment of distributions from individual retirement arrangements.

* * * * *

(b) *Rollover Contribution.* * * *

(3) *To section 403(b) contract.* Paragraph (a)(1) of this section does not apply to any amount paid or distributed from an individual retirement account or individual retirement annuity to the individual for whose benefit the account or annuity is maintained if—

(i) The entire amount received (including money and other property) represents the entire interest in the account or the entire value of the annuity,

(ii) No amount in the account and no part of the value of the annuity is attributable to any source other than a rollover contribution from an annuity contract described in section 403(b) and any earnings on such rollover,

(iii) The entire amount thereof is paid into an annuity contract described in section 403(b) (for the benefit of such individual) not later than the 60th day after the receipt of the payment or distribution, and

(iv) The distribution or transfer is made in a taxable year beginning after December 31, 1978.

(4) * * *

(ii) For taxable years beginning after December 31, 1977, paragraph (b)(1) of this section does not apply to any amount received by an individual from an individual retirement account, individual retirement annuity or retirement bond if at any time during the 1-year period ending on the day of receipt, the individual received any other amount from the individual retirement account, individual retirement annuity or retirement bond which was not includible in his gross income because of the application of paragraph (b)(1) of this section. This rule applies to each separate individual retirement account, individual retirement annuity, or retirement bond maintained by an individual. Thus, if an individual maintains two individual retirement accounts, IRA–1 and IRA–2, and rolls over the assets of IRA–1 into IRA–3, he is not precluded by this subdivision from making a tax-free rollover from IRA–2 to IRA–3 or any other IRA within one year after the rollover from IRA–1 to IRA–3.

(c) * * *

(3) *Time of inclusion.* * * *

(ii) For taxable years beginning after December 31, 1976, the amount of net income determined under subparagraph (2) is includible in the gross income of the individual in the taxable year in which such excess contribution is made. The amount of net income thus distributed is subject to the tax imposed by section 408(f)(1) for the year includible in gross income.

(h) *Certain contributions of excess contributions after due date of return for taxable year*—(1) *general rule.* In the case of any individual, if the aggregate contributions (other than valid rollover contributions) paid for any taxable year to an individual retirement account or for an individual retirement annuity do not exceed $1,750, section 408(d)(1) shall not apply to the distribution of any such contribution to the extent that such contribution exceeds the amount allowable as a deduction under section 219 or 220 for the taxable year for which the contribution was paid—

(i) If such distribution is received after the date described in section 408(d)(4),

(ii) But only to the extent that no deduction has been allowed under section 219 or 220 with respect to such excess contribution.

(2) *Excess rollover contribution attributable to erroneous information.* If the taxpayer reasonably relies on

information supplied pursuant to subtitle F of the Internal Revenue Code of 1954 for determining the amount of a rollover contribution, but such information was erroneous, subparagraph (1) of this paragraph shall be applied by increasing the dollar limit set forth therein by that portion of the excess contribution which was attributable to such information.

(3) *Special rule for contributions to simplified employee pension.* If employer contributions on behalf of the individual are paid for the taxable year to a simplified employee pension, the dollar limitation of subparagraph (1) shall be the lesser of the amount of such contributions or $7,500. See § 1.219–3 (a)(3)(iv) for a special rule where there is more than one employer.

(4) *Effective date.* (1) Subparagraphs (1) and (2) of this paragraph shall apply to distributions in taxable years beginning after December 31, 1975.

(ii) In the case of contribitions for taxable years beginning before January 1, 1978, paragraph (5) of section 408(d) of the Internal Revenue Code of 1954 shall be applied as if such paragraph did not contain any dollar limitation.

(4) *Examples.* The provisions of this paragraph may be illustrated by the following examples:

Example (1). T, a calendar-year taxpayer, had been a participant in a government pension plan for 6 years prior to separation from service on July 31, 1976. The plan required T to make mandatory contributions and as of July 31, 1976, these mandatory contributions totaled $6,000. Upon T' separation from service, she was given the option of receiving back all of her mandatory contribution or leaving then with the plan. T elected to receive her mandatory contributions and attempted to roll over these amounts into an individual retirement account (IRA) in August of 1976. The trustee of the IRA accepted these funds and IRA was established. In March of 1977, T discovered that the funds she received from the government plan did not qualify for rollover treatment because they were employee contributions and withdrew all of the money from her IRA. T will not have to include any of the money withdrawn from the IRA in gross income for 1977 because the transitional rule of paragraph (h)(3)(ii) permits the withdrawal of all contributions which have not been allowed as deductions under section 219 or 220 made to IRA's for taxable years beginning before January 1, 1978, regardless of the amount of the contribution.

Example (2). (i) On April 1, 1980, A, a calendar-year taxpayer, receives a lump sum distribution satisfying the requirements of section 402(e)(4) (A) and (C) under the plan of A's employer. The distribution consists of $50,000 case. A made contributions under the plan totaling $8,000, and has received no prior distributions under the plan. However, on the form furnished to A by the employer on account of the distribution, A's contributions under the plan are listed as totaling only $4,500. A reasonably relied on this information.

(ii) A desires to establish an individual retirement account (as described in section 408(a)) with the cash received in the distribution. A desires to contribute the maximum amount permitted under the rollover rules. Under sections 402(a)(5)(B) and 402(a)(5)(D)(ii), A determines that the maximum rollover amount is $45,500, the total of the distribution ($50,000), less the amount listed as A's contributions under the plan ($4,500). The actual maximum rollover amount is $42,000, the total of the distribution ($50,000), less A's actual contribution under the plan ($8,000).

(iii) On May 23, 1980, A contributes $45,500 to an individual retirement account as a rollover contribution.

(iv) On May 1, 1981, A's employer furnishes A a corrected statement indicating that A's contributions under the plan were $8,000. On June 1, 1981, A withdraws $3,500 from the individual retirement account to correct the mistaken contribution. A will not have to include the $3,500 withdrawn from the individual retirement account in gross income for 1981 because the money was placed in the individual retirement account due to erroneous information furnished by the employer and reasonably relied upon by A and thus falls under the exception provided in section 408(d)(5)(B) to section 408(d)(1).

Par. 9. Section 1.408–6 is amended by removing paragraph (d)(4)(xi) and adding a new paragraph (b) to read as follows:

§ 1.408–6 Disclosure statements for individual retirement arrangements.

* * * * *

(b) *Disclosure statements for spousal individual retirement arrangements.* The trustee of an individual retirement account and the issuer of an individual retirement annuity shall furnish to the benefited individual of a spousal individual retirement arrangement a disclosure statement in accordance with paragraph (d). In the case of a spousal individual retirement arrangement that uses subaccounts, the benefited individual includes both the working and non-working spouse.

Par. 10. There are added after § 1.408–6 the following new sections:

§ 1.408–7 Simplified employee pension.

(a) *In general.* The term "simplified employee pension" means an individual retirement account or individual retirement annuity described in section 408 (a), (b) or (c) with respect to which the requirements of paragraphs (b), (d), (e), (g), and (h) of this section are met and the requirements of § 1.408–8 are met with respect to any calendar year.

(b) *Establishment of simplified employee pension.* In order to establish a simplified employee pension, the employer must execute a written instrument (hereafter referred to as the simplified employee pension arrangement) within the time prescribed for making deductible contributions. This instrument shall include: the name of the employer, the requirements for employee participation, the signature of a responsible official, and the definite allocation formula specified in section 408 (k)(5) and paragraph (f) of this section.

(c) *Variation in contribution*—(1) *Permitted variations.* An employer's total contributions to its employees' simplified employee pensions may vary annually at the employer's discretion.

(2) *Salary reduction.* Contributions made to a simplified employee pension under an arrangement under which the contribution will be made only if the employee receives a reduction in compensation or forgoes a compensation increase shall be treated as employer contributions to a simplified employee pension only if the arrangement precludes an individual election by the employee. If there is an individual election, then the contribution shall be treated as an employee contribution.

(d) *Participation requirements*—(1) *Age and service requirements.* This paragraph is satisfied with respect to a simplified employee pension arrangement for a calendar year only if for such year the employer contributes to the simplified employee pension on behalf of each individual who is an employee at any time during the calendar year who has—

(i) Attained age 25,

(ii) Performed service for the employer during at least 3 of the immediately preceding 5 calendar years, and

(iii) Received at least $200 compensation from the employer for the calendar year.

(2) *Execution of documents.* The employer may execute any necessary documents on behalf of an employee who is entitled to a contribution to a simplified employee pension if the employee is unable or unwilling to execute such documents or the employer is unable to locate the employee.

(3) *Required employment.* An employer may not require that an employee be employed as of a particular date in order to receive a contribution for a calendar year.

(4) *Nonresident aliens and employees covered by collective-bargaining agreements.* An employer may exclude from participation in the simplified employee pension arrangement employees described in section 410(b)(2)(A) or 410(b)(2)(C).

(5) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Corporation X maintains a simplified employee pension arrangement for its employees. Individual J worked for Corporation X while in graduate school in 1976, 1977, and 1978. J never worked more than 25 days in any particular year. In October of 1979, J began to work for Corporation X on a full-time basis. J earned $5,000 from Corporation X for 1979. J became 25 on December 31, 1979. Corporation X must make a contribution to a simplified employee pension maintained on behalf of J for 1979 because as of December 31, 1979, J had met the minimum age requirement of section 408(k)(2), had performed service for Corporation X in 3 of the 5 calendar years preceding 1979, and met the minimum compensation requirements of paragraph (d)(1)(iii).

(e) *Requirement of written allocation formula*—(1) *Requirement of definite written allocation formula.* Employer contributions to a simplified employee pension must be made under a definite written allocation formula which specifies—

(i) The requirements which an employee must satisfy to share in an allocation, and

(ii) The manner in which the amount allocated to each employee's account is computed.

(2) *Employer may vary formula.* An employer may vary the definite written allocation formula from year to year provided the simplified employee pension arrangement is amended by the permissible date for making contributions to indicate the new formula.

(f) *Treatment of contributions which exceed the written allocation formula*—(1) *General rule.* To the extent that employer contributions do not satisfy § 1.408–7(e)(1), the contributions shall be deemed to be contributions which are not made under a simplified employee pension arrangement except for purposes of section 408(a)(1), (b)(2)(B) and (d)(5). These contributions shall be deemed made to an individual retirement account or individual retirement annuity not maintained as part of a simplified employee pension arrangement.

(2) *Example.* This paragraph is illustrated by the following example:

Example. (i) Assume that in 1979 Corporation X adopts a simplified employee pension arrangement ("SEP Arrangement"). The arrangement calls for Corporation X to contribute the same percentage of each participant's compensation exclusive of SEP contributions to a simplified employee pension (Allocation Compensation). X has three employees, A, B and C, who satisfy the participation requirements of the SEP Arrangement. The compensation, the contributions to the individual simplified employee pension ("SEP") for A, B and C and the varying treatment of the contributions are set forth as follows:

Employee	Gross income	Net compensation before contribution	SEP-IRA contribution	Ratio of SEP-IRA contributions to net compensation (percent)
A	$11,000	$10,000	$1,000	10
B	11,500	10,000	1,500	15
C	57,500	50,000	7,500	15
Totals	80,000	$70,000	$10,000	

(ii) Under the special rule of this paragraph, because only 10 percent of compensation was allocated to A, and the allocation formula provides that the same percentage will be allocated to each participant, a certain portion of the contribution to B and C under the SEP shall be deemed made to IRA's that are not part of the SEP Arrangement.

(iii) To determine A's and B's Allocation Compensation the respective total compensation included in A's and B's gross income must be divided by 1.10 (1 plus the percentage of Allocation Compensation contributed to A under the SEP Arrangement). The excess of compensation included in gross income over Allocation Compensation is considered as a contribution under the SEP. The following table shows the result of this calculation:

Employee	Gross income	Allocation compensation [1]	SEP-IRA contribution	Deemed IRA contribution [2]
A	$11,000	$10,000	$1,000	$0
B	11,500	10,455	1,045	455
C	57,500	52,273	5,227	2,273
Totals	80,000	72,728	7,272	2,728

[1] Gross income divided by 1.10.
[2] Also included in Allocation Compensation.

(iv) Under section 404(h) for purposes of computing Corporation X's deduction, only the $7,272 is considered as a contribution to a SEP Arrangement described in section 408(k) under the special rule. The allowable 404(h) deduction equals $10,909 (15% of the excess of total compensation of $80,000 over the SEP contribution of $7,272 or 15% of $72,728). The other $2,728 is payment of compensation and subject to the deduction rules of section 162 or 212. Similarly, the $2,728 would not be considered as an employer SEP contribution for purposes of exemption from FICA and FUTA taxes under sections 3121 and 3306.

(v) The effect of treating the $2,273 as a contribution to SEP's for purposes of section 408 (a)(1), (b)(2)(B) and (d)(5) is to not disqualify the individual retirement arrangement of C for accepting non-SEP contributions in excess of $1,500 and to allow C to withdraw the excess contribution of $2,273 without including that amount in income under section 408(d)(1).

(g) *Permitted withdrawals.* A simplified employee pension meets the requirements of this paragraph only if—

(1) Employer contributions thereto are not conditioned on the retention in such pension of any portion of the amount contributed, and

(2) There is no prohibition imposed by the employer on withdrawals from the simplified employee pension.

See section 408 (d) for rules concerning the taxation of withdrawals from individual retirement accounts and annuities. See section 408(f)(1) for penalties for premature withdrawals from individual retirement accounts and annuities.

(h) *Section 401 (j) plan.* The requirements of this paragraph are met with respect to a simplified employee pension for a calendar year unless the employer maintains during any part of such year a plan—

(1) Some or all of the active participants in which are employees (within the meaning of section 401(c)(1)) or shareholder-employees (as defined in section 1379(d)), and

(2) To which section 401(j) applies.

§ 1.408–8 Nondiscrimination requirements for simplified employee pensions.

(a) *In general.* The requirements of this section are met with respect to a simplified employee pension for a calendar year if for such year the contributions made by the employer to simplified employee pensions of its employees do not discriminate in favor of any employee who is—

(1) An officer,

(2) A shareholder, within the meaning of paragraph (b)(2),

(3) A self-employed individual, or

(4) Highly compensated.

(b) *Special rules.* (1) For puroses of this section, employees described in subparagraph (A) or (C) of section 410 (b)(2) shall be excluded from consideration.

(2) An individual shall be considered a shareholder if he owns (with the application of section 318) more than 10 percent of the value of the stock of the employer.

(c) *Contributions must bear a uniform relationship to total compensation*—(1) *General rule.* Contributions shall be considered discriminatory unless employer contributions to its employees' simplified employee pensions bear a uniform relationship to the total compensation (not in excess of the first $100,000) of each employee maintaining a simplified employee pension. A rate of contribution which decreases as compensation increases shall be considered uniform.

(2) *Definition of compensation.* For purposes of this section, the term "compensation" has the meaning set forth in § 1.219–1, and is determined without regard to the employer contributions to the simplified employee pension arrangement.

(3) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. Corporation X maintains a simplified employee pension arrangement which allocates employer contributions in the manner described below. First, contributions made by June 30 of each year are allocated in proportion to compensation paid from January 1 to June 30. Second, contributions made between July 1 and December 31 are allocated in proportion to compensation paid during the same period.

In 1980, the salaries paid, and contributions allocated are shown below:

Participant	Compensation[1]	Allocation[2]	Compensation[3]	Allocation[4]
A	10,000	500	10,000	1,000
B	10,000	500	1,000	100
C	10,000	500	15,000	1,500

[1] Jan. 1, 1980 to June 30, 1980.
[2] June 30, 1980.
[3] July 1, 1980 to Dec. 31, 1980.
[4] Dec. 31, 1980.

For 1980, A, B, and C received allocations equal to 7.5 percent, 5.45 percent, and 8 percent of compensation, respectively. These contributions are discriminatory because they do not bear a uniform relationship to total compensation.

(d) *Treatment of certain contributions and taxes*—(1) *General rule.* (i) Except as provided in this paragraph, employer contributions do not meet the requirements of this section unless such contributions meet the requirements of this section without taking into account contributions or benefits under Chapter 2 of the Internal Revenue Code (relating to tax on self-employment income), Chapter 21 (relating to Federal Insurance Contribution Act), Title II of the Social Security Act, or any other Federal or State law ("Social Security Taxes"). If the employer does not maintain an integrated plan at any time during the taxable year, taxes paid under section 3111 (a) (relating to tax on employers) with respect to an employee may, for purposes of this section, be taken into account as a contribution by the employer to an employee's simplified employee pension. If contributions are made to the simplified emplyee pension of an owner-employee, the preceding sentence shall not apply unless taxes paid by all such owner-employees under section 1401 (a), and the taxes which would be payable under section 1401 (a) by such owner-employees but for paragraphs (4) and (5) of section 1402 (c), are taken into account as contributions by the employer on behalf of such owner-employees. The amount of such taxes shall be determined in a manner consistent with § 1.401–12(h)(3).

(ii) If contributions are made to the simplified employee pension of a self-employed individual who is not an owner-employee, the arrangement may be integrated. In such a case, the portion of the earned income of such individual which does not exceed the maximum amount which may be treated as self-employment income under section 1402(b)(1) shall be treated as "wages" under section 3121(a)(1) subject to the tax imposed by section 3111(a) and such tax shall be taken into account as employer contributions.

(iii) An employer may take into account as contributions amounts not in excess of such Social Security taxes. Thus, an employer may integrate using a rate less than the maximum rate of tax under section 3111 (a) or compensation less than the maximum amount specified as wages under section 3121 (a).

(2) *Integrated plan defined.* For purposes of subparagraph (1), the term "integrated plan" means a plan which meets the requirements of section 401(a), 403(a), or 405(a) but would not meet such requirements if contributions or benefits under Chapter 2 (relating to tax on self-employment income), Chapter 21 (relating to Federal Insurance Contributions Act), Title II of the Social Security Act, or any other Federal or State law were not taken into account.

(e) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). Corporation M adopts a simplified employee pension arrangement. The corporation would like to contribute 7.5% of an employee's first $10,000 in compensation and 5% of al compensation above $10,000. The simplified employee pension arrangement which Corporation M adopts will not be considered discriminatory within the meaning of paragraph (c) of this section because the rate of contribution decreases as compensation increases.

Example (2). Corporation L adopts a simplified employee pension plan. It wishes to contribute to the simplified employee pension of each employee who is currently performing service. The corporation would like to contribute to the simplified employee pensions 5% of the total compensation of each employee who has completed up to 5 years of service and 7% of the total compensation of each employee who has completed more than 5 years of service. The simplified employee pension plan which Corporation L adopts will be considered discriminatory within the meaning of paragraph (c) of this section because the employer contributions do not bear a uniform relationship to each employee's total compensation.

§ 1.408–9 Reports for simplified employee pensions.

(a) *Information to be furnished upon adoption of plan.* (1) An employer who adopts a definite written allocation formula for making contributions to an employee's simplified employee pension shall furnish the employee in writing the following information:

(i) A notice that the simplified employee pension arrangement has been adopted,

(ii) The requirements which an employee must meet in order to receive a contribution under the agreement,

(iii) The basis upon which the employer's contribution will be allocated to employees, and

(iv) Such other information that the Commissioner may require.

(2) The information in subparagraph (1) must be furnished to an employee no later than a reasonable time after the later of the time the employee becomes employed or the time of the adoption of the simplified employee pension arrangement.

(3) The Commissioner may relieve employers from furnishing any or all of the information specified in subparagraph (1).

(b) *Information to be furnished for a calendar year.* (1) For each calendar year, the employer shall furnish to the employee a written statement indicating the amount of employer contributions made to the employee's individual retirement account or individual retirement annuity under the simplified employee pension arrangement. This requirement is satisfied if the information is on the employee's W–2 for the calendar year for which the contribution is made. Amounts described in § 1.408–7(f)(1) which are not considered made under the simplified employee pension arrangement should not be included.

(2) The information required to be furnished by subparagraph (1) shall be furnished to the employee no later than the later of 30 days after the contribution or January 31 following the calendar year for which the contribution was made.

(c) The Internal Revenue Service may require reports to be filed with the Service with respect to employees who cannot be located by the employer (see § 1.408–7(d)(2)). Such reports shall include such information and shall be filed in the time and manner as the Commissioner specifies.

(d) *Effective date.* The provisions of this section are effective for calendar years beginning after December 31, 1978.

Par. 11. Section 1.409–1 is amended by adding "or 220" after 219 each place it appears and by revising paragraph (c) to read as follows:

§ 1.409–1 Retirement bonds.

* * * * *

(c) *Rollover.* The first sentence of paragraph (b)(1) of this section shall not apply in any case in which a retirement bond is redeemed by the registered owner before the close of the taxable year in which he attains the age of 70½ if he transfers the entire amount of the proceeds of such redemption to—

(1) An individual retirement account described in section 408(a) or an individual retirement annuity described in section 408(b) (other than an endownent contract described in § 1.408–3 (e)), or

(2) An employees' trust which is described in section 401 (a) which is exempt from tax under section 501 (a), an annuity plan described in section 403 (a), or an annuity contract described in section 403 (b), for the benefit of the registered owner.

on or before the 60th day after the day on which he received the proceeds of such redemption. This paragraph does not apply in the case of a transfer to such an employees' trust or such an annuity plan unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such an employees' trust or annuity plan (other than an annuity plan or a trust forming part of a plan under which the individual was an employee within the meaning of section 401 (c)(1) at the time contributions were made on his behalf under the plan). This paragraph does not apply in the case of a transfer to an annuity contract described in section 403 (b) unless no part of the value of such proceeds is attributable to any source other than a rollover contribution from such annuity contract.

Par. 12. Section 1.415–8 is amended by adding at the end thereof new paragraph (i).

§ 1.415–8 Combing and aggregating plans.

* * * * *

(i) *Special aggregation rule for simplified employee pension.* For purposes of section 415 and this section, any contribution made by an employer to a simplified employee pension (as defined in section 408 (k)) of an individual for a calendar year shall be treated as an employer contribution to a defined contribution plan maintained by that employer. This paragraph shall apply to taxable years beginning after December 31, 1980.

Gift Tax Regulations

26 CFR Part 25

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 13. There is added after § 25.2503–4 the following new section:

§ 25.2503–5 Individual retirement plan for spouse.

(a) *In general.* For purposes of section 2503 (b), and payment made by an individual for the benefit of his or her spouse—

(1) To individual retirement account described in section 408 (a),

(2) To an individual retirement subaccount described in § 1.220–1(b)(3),

(3) For an individual retirement annuity described in section 408(b), or

(4) For a retirement bond described in section 409,

shall not be considered a gift of a future interest in property to the extent that such payment is allowable as a deduction under section 220 for the taxable year for which the contribution is made. Thus, for example, if individual A paid $900 to an individual retirement account for 1980 on behalf of A's spouse, B, of which $875 was deductible, $875 would not be a gift of a future interest.

(b) *Effective date.* Paragraph (a) of this section is effective for transfers made after December 31, 1976.

Employment Tax Regulations

26 CFR Part 31

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Par. 14. Section 31.3121(a)(5)–1 is amended by adding at the end thereof a new paragraph (d). This new paragraph reads as follows:

§ 31.3121(a)(5)–1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

* * * * *

(d) *Payments to a simplified employee pension.* The term "wages" does not include any payment made after December 31, 1978 by an employer on behalf of an employee to a simplified employee pension described in section 408(k) if at the time of the payment it is reasonable to believe that the employee will be entitled to a deduction under section 219 for such payment.

Par. 15. Section 31.3306(b)(5)–1 is amended by adding at the end thereof a new paragraph (d). This new paragraph reads as follows:

§ 31.3306(b)(5)–1 Payments from or to certain tax-exempt trusts, or under or to certain annuity plans or bond purchase plans.

* * * * *

(d) *Payments to a simplified employee pension.* The term "wages" does not include any payment made after December 31, 1978 by an employer on behalf of an employee to a simplified employee pension described in section 408(k) if at the time of the payment it is reasonable to believe that the employee will be entitled to a deduction under section 219 for such payment.

Pension Excise Tax Regulations

26 CFR Part 54

PART 54—PENSION EXCISE TAXES

Par. 16. There is inserted in the appropriate place the following new section:

§ 54.4973–1 Excess contributions to certain accounts, contracts and bonds.

(a) *In general.* Under section 4973, in the case of an individual retirement account (described in section 408(a)), an individual retirement annuity (described in section 498(b)), a custodial account treated as an annuity contract under section 403(b)(7)(A), or an individual retirement bond described in section 409, a tax equal to 6 percent of the amount of excess contributions (as defined in paragraph (c) or (d) of this section) to such account, annuity or bond is imposed.

(b) *Individual liable for tax*—(1) *Individual retirement plans.* In the case of an individual retirement account, individual retirement annuity or individual retirement bond the tax imposed by section 4973 shall be paid by the individual to whom a deduction is or would be allowed with respect to contributions for the taxable year under section 219 (determined without regard to subsection (b)(1) thereof) or section 220 (determined without regard to subsection (b)(1) thereof), whichever is appropriate.

(2) *Custodial accounts under section 403(b)(7)(A).* In the case of a custodial account treated as an annuity contract under section 403(b)(7)(A), the tax imposed by section 4973 shall be paid by the individual for whose benefit the account is maintained.

(c) *Excess contributions defined for individual retirement plans.* For purposes of section 4973, in the case of individual retirement accounts, individual retirement annuities, or individual retirement bonds, the term "excess contributions" means the sum of—

(1) The excess (if any) of—

(i) The amount contributed for the taxable year to the accounts or for the annuities or bonds (other than a valid rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3), 409(b)(3)(C)), over

(ii) The amount allowable as a deduction under section 219 or 220 for such contributions, and

(2) The amount determined under this subsection for the preceding taxable year, reduced by the sum of—

(i) The distributions out of the account for the taxable year which were included in the gross income of the payee under section 408(d)(1),

(ii) The distributions out of the account for the taxable year to which section 408(d)(5) applies, and

(iii) The excess (if any) of the maximum amount allowable as a deduction under section 219 or 220 for the taxable year over the amount contributed (determined without regard to sections 219(c)(5) and 220(c)(6)) to the accounts or for the annuities or bonds for the taxable year. For purposes of this paragraph, any contribution which is distributed from the individual retirement account, individual retirement annuity, or bond in a distribution to which section 408(d)(4) applies shall be treated as an amount not contributed.

(d) *Excess contributions defined for custodial accounts under section 403(b)(7)(A).* For purposes of section 4973, in the case of a custodial account referred to in paragraph (b)(2) of this section, the term "excess contributions" means the sum of—

(1) The excess (if any) of the amount contributed for the taxable year to such account (other than a valid rollover contribution described in section 403(b)(8), 408(d)(3)(A)(iii), or 409(b)(3)(C)), over the lesser of the amount excludable from gross income under section 403(b) or the amount permitted to be contributed under the limitations contained in section 415 (or under whichever such section is applicable, if only one is applicable), and

(2) The amount determined under this subsection for the preceding taxable year, reduced by—

(i) The excess (if any) of the lesser of (A) the amount excludable from gross income under section 403(b) or (B) the amount permitted to be contributed under the limitations contained in section 415 over the amount contributed to the account for the taxable year (or under whichever such section is applicable, if only one is applicable), and

(ii) The sum of the distributions out of the account (for the taxable year) which are included in gross income under section 72(e).

(e) *Special rules.* (1) The tax imposed by section 4973 cannot exceed 6 percent of the value (determined as of the close of the individual's taxable year) of the account, annuity or bond.

(2) In the case of an endowment contract described in section 408(b), the tax imposed by section 4973 is not applicable to any amount allocate under § 1.219-1(b)(3) to the cost of life insurance under the contract.

(f) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). On April 20, 1979, A, a single individual, establishes an individual retirement account (IRA) and contributes $1,500. On January 11, 1980, A determines he has compensation for 1979 within the meaning of section 219(c) and the regulations thereafter of $8,000. Under section 219, the maximum amount allowable as a deduction for retirement savings available to A is $1,200. On April 15, 1980, A files his income tax return for 1979 taking a deduction of $1,200 for his contribution to his IRA, and as of such date there had been no distribution from the IRA. Under section 4973, A would have $300 of excess contribution in his account for 1979 [($1,500-$1,200) + 0] and A would be liable for an excise tax of $18 on such excess contribution.

Example (2) Assume the same facts as in Example (1). Assume further that on July 1, 1980, A contributes $1,500 to his account. On January 9, 1981, A determines that he has compensation for 1980 of $12,000. Under section 219, the maximum amount allowable to A as a deduction for retirement savings is $1,500 for 1980. On April 15, 1981, A files his income tax return for 1980 taking a deduction of $1,500 for his contribution to his IRA. As of such date, there had been no distribution from the account. Under section 4973, A would have $300 of excess contributions in his IRA for 1980 [($1,500−$1,500)+($300−$ 0)] and would be liable for an excise tax of $18 on such excess contribution.

Example (3) Assume the same facts as in Example (1) and (2). Assume further that on July 1, 1981, A contributes $1,000 to his account. On January 9, 1982, A determines that he has compensation for 1981 of $15,000. Under section 219, the maximum amount allowable as a deduction to A as a deduction for retirement savings is $1,500 for 1981. On April 15, 1982, A files his income tax return for 1981 taking a deduction of $1,000 for his 1981 contribution to his IRA and an additional deduction of $300 under section 219 (c)(5). A will have no excess contributions in his IRA for 1981 because he made no excess contributions for 1981 and the previous year's excess contribution has been eliminated by the underutilization (section 4973 (b)(2)(C)) of 1981's allowable contribution.

Example (4) Assume the same facts as in Examples (1) and (2). Assume further that on July 1, 1981, A contributes $1,500 to his account. On December 1, 1981, A withdraws $300 from his IRA. On January 9, 1982, A determines that he has compensation for 1981 of $15,000. Under section 219, the maximum amount allowable as a deduction to A as a deduction for retirement savings is $1,500 for 1981. On April 15, 1982, A files his income tax return for 1981 taking a deduction of $1,500 for his 1981 contribution to his IRA. A will have no excess contributions in his IRA for 1981 because he made no excess contributions for 1981 and the previous year's excess contribution has been eliminated in a distribution described in section 408 (d)(5).

Example (5) On February 1, 1979, H, an individual, establishes an IRA for himself and one for his nonworking spouse W. He contributes $875 to his account and $775 to his wife's account. On January 31, 1980, H determines that he has compensation for 1979 within the meaning of section 220 (c) and the regulations thereunder of $20,000. Under Section 220 (b)(1), the maximum amount allowable as a deduction for retirement savings to A is $1,550. On April 15, 1980, H files a joint income tax return for 1979 and takes a deduction of $1,550 for his contribution to the IRA of himself and his spouse. As of such date, there had been no distribution from either IRA. Under section 4973, H would have $100 of excess contributions in his account for 1979 [($1,650−$1,550)+0] and H would be liable for an excise tax of $6 on such excess contribution.

Example (6) Assume the same facts as in Example (5). Assume further that on June 1, 1980, H contributes $875 to his account and $875 to his wife's account. On January 31, 1981, H determines that he has compensation for 1980 within the meaning of section 220 (c) and the regulations thereunder of $20,000. Under section 220 b)(1), the maximum amount allowable as a deduction for retirement savings is $1,750. On April 15, 1981, H files his income tax return for 1980 taking a deduction of $1,750 for his contribution to the individual retirement account of himself and his wife. As of such date, there had been no distribution from either account. Under section 4973, H would have $100 of excess contributions in his account for 1980 and would be liable for an excise tax of $6 for such excess contribution.

Example (7) Assume the same facts as in Example (5). Assume further that on June 1, 1980, A contributes $1,000 to his account and nothing to his wife's account. On January 31, 1981, A determines that he has compensation for 1980 within the meaning of section 219 (c) of $22,000. On April 15, 1981, H files his income tax return for 1980 and takes a $1,000 deduction under section 219 (a) for the 1980 contribution to his IRA and a $100 deduction under section 219 (c)(5) for the 1979 excess contribution. Under section 4973, H would have $0 excess contributions for 1980 because the previous year's excess contribution has been eliminated under section 4973 (b)(2) (C).

Example (8) On March 1, 1979, a custodial account under section 403 (b)(7) (A) is established for the benefit of T who is otherwise eligible to have such an account established and a contribution of $7,000 is made to such account by A's employer which is a tax-exempt organization described in section 501 (c)(3). The amount excludible from T's gross income in 1979 under section 403 (b) is $4,000 and the amount permitted to be contributed for 1979 under section 415 is $5,000. Under section 4973, T would have an excess contribution of $3,000 [($7,000 − $4,000) + 0] in his account for 1979 and would be liable for an excise tax of $180.

Par. 17. A new paragraph (d) is added to § 54.4974–1 to read as follows.

§ 54.4974–1 Excise tax on accumulations in individual retirement accounts or annuities.

* * * * *

(d) *Waiver of tax in certain cases*—(1) In general. If the payee described in section 4974(a) establishes to the satisfaction of the Commissioner that—

(i) The shortfall described in section 4974(a) in the amount distributed during any taxable year was due to reasonable error, and

(ii) Reasonable steps are being taken to remedy the shortfall, the tax imposed by section 4974(a) may be waived.

(2) *Reasonable error.* Examples of reasonable error leading to an underdistribution include: erroneous advice from the sponsoring organization or other pension advisors or organizations which misled the payee, attempts by the payee to apply the required formula which led to a miscalculation, or misunderstanding of the formula.

Procedure and Administration Regulations

26 CFR Part 301

PART 301—PROCEDURE AND ADMINISTRATION

Par. 18. Section 301.6693–1 is revised by changing its title, adding after paragraph (a)(2) a new paragraph (a)(3), and amending paragraph (e). Section 301.6693–1, as revised, reads as follows:

§ 301.6693–1 Penalty for failure to provide reports and documents concerning individual retirement accounts, individual retirement annuities and simplified employee pensions.

(a) *In general.* * * *

(3) *Simplified employee pensions.* An employer who makes a contribution on behalf of an employee to a simplified employee pension who fails to furnish or file a report or any other document required under section 408(l) or § 1.408–9 within the time and in the manner prescribed for furnishing or filing such item shall pay a penalty of $10 for each failure unless it is shown that such failure is due to reasonable cause.

* * * * *

(e) *Effective date.* This section shall take effect on January 1, 1975, except for paragraph (a)(3) which is effective for years beginning after December 31, 1978.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

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DEPARTMENT OF THE INTERIOR

Geological Survey

30 CFR Ch. II

Arctic National Wildlife Refuge Oil and Gas Exploration

ACTION: Notice of intent to propose rulemaking, prepare an environmental impact statement (EIS), and Notice of public meetings.

SUMMARY: The Director of U.S. Geological Survey (USGS) is seeking public views and comments to assist in drafting regulations and in scoping the EIS on exploration activities within the coastal plain of the Arctic National Wildlife Refuge. Written comments and views are requested with regard to relevant questions concerning both actions of this program.

DATES: Comment date: Comments must be submitted on or before September 1, 1981.

Meeting Dates

August 13, 1981—Anchorage, Alaska
August 17, 1981—Fairbanks, Alaska
August 19, 1981—Kaktovik, Alaska
August 20–27, 1981—Arctic Village and Barrow, Alaska
September 1, 1981—Washington, D.C.

ADDRESSES: Written comments are to be submitted to Chief, Conservation Division, USGS, 600 National Center, Reston, Virginia 22092.

Public Meeting Locations

An opportunity to present oral statements on the program will be accorded in public meetings to be held on August 13, 1981, at the Anchorage Federal Building, Room C–109, 701 "C" Street, Anchorage, Alaska, at 7 p.m., at the Fairbanks Federal Building, Room 236, 101 12th Avenue, Fairbanks, Alaska, at 7 p.m. on August 17, 1981; and at the Main Interior Building Auditorium, Washington, D.C., at 1 p.m., on September 1, 1981. Additional public meetings are scheduled to be conducted at Kaktovik on August 19, 1981, at a location and time to be announced later and at Arctic Village and Barrow from August 20 to August 27, 1981.

FOR FURTHER INFORMATION CONTACT: John Haugh, Branch of Onshore Environmental Management, U.S. Geological Survey, 650 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 22092, phone (703) 860–7531 or FTS 928–7531, or Joe Dygas, U.S. Geological Survey, Box 259, Anchorage, Alaska 95510, phone (907) 271–4356, with regard to the EIS and regulations, or Gerald Garner, Arctic National Wildlife Refuge, U.S. Fish and Wildlife Service, Federal Building, 101 12th Avenue, Fairbanks, Alaska 99701, phone (907) 452–1951 with regard to the baseline fish and wildlife study.

SUPPLEMENTARY INFORMATION:

Public Meetings

Oral statements at these meetings will be limited to 5 minutes. Individuals will be alloted time for the specific meeting requested in the order the requests are received. To the extent that time is available, after presentation of oral statements by those who have given advance notice, the presiding officer will give others present an opportunity to be heard in the order that their name appears on the meeting register.

Section 1002 of the Alaska National Interest Lands Conservation Act (ANILCA) provides for the submission of a Secretarial report and recommendations to the Congress on the oil and gas potential and future development of the Arctic National Wildlife Refuge Coastal Plain. To aid in preparing that report, the Congress authorized a limited exploration program consisting of surficial geology and geophysical surveys as a means of identifying the location and estimating the probable extent of oil and gas resources that may underlie the coastal plain of the refuge.

Prior to approving any exploration plan, various studies must be initiated and final regulations published. Specifically, the Secretary is directed to prepare a baseline study on the fish and wildlife values of the coastal plain and to continue gathering information during the study period. Lead responsibility for the baseline study is assigned to the Director, U.S. Fish and Wildlife Service (USFWS). No later than December 2, 1982, the Secretary is to publish guidelines by regulation and is to file an EIS on exploration activities. Lead responsibility for drafting the regulations and the EIS is assigned to the Director, USGS. The USFWS will serve as a cooperating agency in preparing the EIS. Both Bureaus will be working closely in preparing the regulations.

The regulations are to include necessary restrictions to protect fish and wildlife and their habitats and the environment of the study area.